

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In the Matter of:

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and "Preexisting"
Subscription Services (SDARS III)

Docket No. 16-CRB-0001-SR/PSSR
(2018-2022)

Received

SEP 15 2016

Copyright Royalty Board

DECLARATION OF JACKSON D. TOOF

(On behalf of Music Choice)

1. I am counsel for Music Choice in the above-captioned proceeding. I respectfully submit this Declaration pursuant to 28 U.S.C. § 1746. I am authorized by Music Choice to submit this Declaration on Music Choice's behalf.

2. A true and correct copy of George Johnson's (GEO) Reply to First Set of Requests for Production of Documents from Sirius XM, Music Choice, and Muzak is attached hereto as **Exhibit A**.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

Dated: September 15, 2016


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Counsel for Music Choice

EXHIBIT A

Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Library of Congress
Washington, D.C.

)	
In the Matter of)	
)	
Determination of Royalty Rates)	Docket No. 16-CRB-0001-SR/PSSR
for Satellite Radio and "Preexisting")	(2018–2022)
Subscription Services)	
(SDARS III))	
)	

GEORGE JOHNSON'S (GEO) REPLY TO
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
FROM SIRIUS XM, MUSIC CHOICE, AND MUZAK

George D. Johnson (GEO), an individual *pro se* non-attorney respectfully submits the following Reply to First Set of Requests for Production of Documents ("RFPD") from Sirius XM Radio, Inc. ("Sirius"), Music Choice, and Muzak LLC ("Muzak") or collectively the ("Parties"), submitted on June 20, 2016 in the above-captioned proceeding (SDARS III). GEO apologizes to Counsel for being late in my Reply but as most of you know in addition to this SDARS proceeding I'm also managing the busy Phonorecords III rate proceeding and an appeal of the *Web IV* Determination in the U.S. Court of Appeals, all *pro se* and with no help, so thank you for your patience.

In general, GEO has not done any deals at all in the past 3 years with any licensee and only a few direct deals prior to that, *i.e* since 2000 with Apple iTunes and Google Play for downloads only.

As an experiment at the time in 2011 to 2013, GEO uploaded three music videos to [youtube.com](https://www.youtube.com) and [vimeo.com](https://www.vimeo.com), but were standard click and accept deals online, not negotiated.

GEO also did not do any deals with any of the Participants in this proceeding or any pre-existing, on-demand, or freemium “lean back” streaming services, so none of that data exists.

GEO has intentionally not done below-market benchmark deals due to his firm belief that by accepting a confiscatory royalty rate at \$.00 per-performance of a copyrighted sound recordings is the same as participating in my own copyright infringement, according to the Art. 1 exclusive rights clause in the U.S. Constitution, and also §106 protections of the Copyright Act..

In addition, the moral rights of copyright, the amount of talent, work and money it takes to create sound recordings, the confiscatory nature of setting rates at literally \$.00 cents, the paperwork for accounting for below-market \$.00 rate for streaming services or tracking down all performances, makes being on “legal streaming” sites not cost effective or practical due to the large amount of time, energy and money it takes, or wastes more appropriately.

Finally, due to the sensitive and all-or-nothing nature of benchmarks in these CRB hearings, GEO has also not done deals since it appears that the driving motivation for almost all streaming licensees to do deals with “independents”, is to only get a lower compulsory, statutory \$.00 performance rate to enter into rate court in New York or these various segmented Copyright Royalty Board hearings, *i.e.* as Pandora did with their single Merlin benchmark in *Web IV*, using that Merlin rate at \$.0011 in an attempt to only lower their rate from the current \$.0014 at the time — which the Judges of course increased to \$.0017 in their Determination.

GENERAL OBJECTIONS

GEO makes the following general reservation of rights and asserts the following General Objections to my Reply to the Parties' First RFPDs. I have answered to the best of my ability and knowledge at this time, and without fully gathering all of these documents requested as of today for the July 19, 2016 deadline.

1. GEO objects to the Parties' First RFPD's to the extent they purport to impose obligations beyond those set forth in 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b).

2. These General Objections apply to all of GEO's responses. To the extent specific objections are cited in a response, those specific objections are provided because they are believed to be particularly applicable to the specific Request and are not to be construed as a waiver of any General Objection applicable to information falling within the scope of the Request.

3. GEO reserves all rights and objections to the Requests, generally and specifically, and states additional objections to all of the Requests as having been beyond the scope provided for discovery in the proceeding, irrelevant, disproportional, overly broad, unduly burdensome, an effort to obtain documents and information equally within the possession, custody, or control of the Requesting Party, and to the extent that they sought material protected from disclosure by applicable privileges.

NOTE: GEO will also use the proper form and numbering system, but may take some additional time in preparing just the final list in the proper numbering format.

SIRIUS XM, MUSIC CHOICE, AND MUZAK RFPDS

GEO responds to the following definitions and RFPDs by the Parties.

DEFINITIONS

1. YES
2. YES
3. YES
4. OBJECT, music related only, too broad, irrelevant and unduly burdensome, private personal
5. YES
6. YES
7. YES
8. YES

REQUESTS FOR DOCUMENTS

- | | |
|---|---|
| 1. N/A | 19. Possible Charts from <i>Web IV</i> |
| 2. YES | 20. Possible Charts from <i>Web IV</i> |
| 3. YES | 21. N/A or Possible Charts from <i>Web IV</i> |
| 4. YES | 22. OBJECT, music related only, too broad, irrelevant and private personal info |
| 5. N/A | 23. N/A or Possible Charts from <i>Web IV</i> |
| 6. N/A | 24. N/A or Possible Charts from <i>Web IV</i> |
| 7. N/A | 25. N/A or Possible Charts from <i>Web IV</i> |
| 8. YES | 26. N/A |
| 9. YES - will detail a through j | 27. N/A |
| 10. YES | 28. N/A |
| 11. N/A | 29. Possible Charts from <i>Web IV</i> |
| 12. YES | 30. YES <i>Web IV</i> cost of copyright creation |
| 13. N/A | 31. N/A |
| 14. N/A | 32. Tweets or blog postings is unduly burden. |
| 15. N/A | 33. YES |
| 16. N/A | 34. YES |
| 17. N/A or Possible Charts from <i>Web IV</i> | |
| 18. Possible Charts from <i>Web IV</i> | |

PUBLIC VERSION

GEO will produce the following documents by July 19, 2016 as requested and please let me know if you have any questions. Thank you.

Dated: Wednesday, July 13, 2016

Respectfully submitted,

By: /s/ George D. Johnson
George D. Johnson, *pro se* individual singer
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*George D. Johnson (GEO), a pro se
individual singer and sound recording
creator d/b/a Geo Music Group ("GMG")*

CERTIFICATION OF SERVICE

I, George D. Johnson, ("GEO") an individual singer and sound recording copyright creator, hereby certify that a copy of the foregoing George Johnson's Reply to First Set of Requests for Production of Documents From Sirius XM, Music Choice, and Muzak has been served this 13th day of July, 2016 by electronic mail upon the following parties:

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PUBLIC VERSION

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Universal Music Group (UMG)
Paris, France

Sony Corp
Sony Music Entertainment (SME)
Tokyo, Japan

Access Industries
Warner Music Group (WMG)
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Counsel to SoundExchange (SX), The American Federation of Musicians of the United States and Canada (AFM), Screen Actors Guild and American Federation of Television and Radio Artists (SAG- AFTRA), American Association of Independent Music (A2IM), Universal Music Group (UMG), Sony Music Entertainment (SME), Warner Music Group (WMG), and Recording Industry Association of America (RIAA)

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